In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 2216 of 1993 (O&M)
Date of decision: 5.5.2011

Gram panchayat, Sultanpur

.....Appellant

Versus

Sube Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Mahavir Sandhu, Advocate,
for the appellant.

Mr.C.B.Goel, Advocate
for respondents.

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SABINA, J.

Plaintiff-gram panchayat had filed a suit for declaration.

The case of the plaintiff, in brief, was that the gram panchayat was owner of the land measuring 173 kanals 4 marlas comprised in khasra No.228 and the same was *shamlat deh*. The defendant had taken forcible possession of the suit land. Gram panchayat had filed an application under Section 7 of the Village Common Lands (Regulation) Act, 1961 (for short 'the Act') seeking ejectment of the defendant and the said application was allowed vide order dated 24.8.1973. The appeal filed by the defendant against the

said order was dismissed by the Collector vide order dated 3.6.1974. The writ petition filed by the defendant challenging the said order was dismissed by this Court. The defendant filed a suit bearing No.442 of 1981 in the Civil Court, Hansi impleading the gram panchayat through Pirthi Singh, Sarpanch as defendant. The said suit was filed by the defendant in collusion with the Sarpanch and consequently an ex parte decree was passed in favour of the defendant on 4.1.1984. The suit filed by the defendant was not maintainable in view of Section 13 of the Act.

The defendant, in his written statement, averred that the suit land was not *shamlat deh* and the defendant had become owner in possession of the suit property by way of adverse possession. The defendant had no knowledge of the filing of application under Section 7 of the Act. The suit filed by the defendant had been contested by the gram panchayat by filing a written statement but thereafter, none had appeared on behalf of the gram panchayat and the decree dated 4.1.1984 was passed in favour of the defendant.

On the pleadings of the parties, following issues were framed by the trial Court:-

> "1. Whether the decree and order dated 4.1.84 in civil suit No.442 of 1981 captioned Giani vs. Gram Panchayat, Sultanpur passed by Sub Judge Ist Class, Hansi is illegal, against facts without jurisdiction, nullity and not binding on the rights of the plaintiff? OPP.
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> 2. Whether the defendant already stands ejected from the land in question in due process of law as alleged in the plaint OPP

3. Whether the plaintiff is entitled to injunction as prayed for ? OPP

4. Whether the decree in question has become final between the parties, if so, its effect ? OPD

5. Whether the present suit is barred by principle of resjudicata as alleged in the preliminary objection No.2 in the written statement? OPD

6. Whether the suit is not maintainable in the present form ? OPD

7. Whether the plaintiff is estopped from filing the present suit by its own act and conduct? OPD

8. Whether the suit is bad for want of disclosure of cause of action ? OPD

9. Whether the suit is barred by limitation ? OPD

10. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction ? OPD

11. Whether the plaintiff has no locus standi to file the present suit ? OPD

12.Relief."

The Sub Judge (Ist Class) vide judgment and decree dated 25.8.1989 decreed the suit of the plaintiff. Aggrieved by the said judgment and decree, legal representatives of the defendant preferred an appeal and the same was allowed by the Additional District Judge vide judgment and decree dated 3.8.1993 and consequently, the suit filed by the plaintiff was dismissed. Hence, the present appeal by the plaintiff-gram panchayat.

Learned counsel for the appellant has submitted that the

suit filed by the plaintiff was liable to be decreed as the impugned decree had been obtained by the defendant in collusion with the Sarpanch. The suit filed by the defendant on the basis of adverse possession was not maintainable. The jurisdiction of the Civil Court was barred under Section 13 of the Act. Since the earlier decree was a result of fraud and collusion, the same could be challenged by the gram panchayat by filing a fresh suit.

Learned counsel for the respondents, on the other hand, has submitted that the earlier suit filed by the defendant was maintainable under the Act. In the said suit, the Sarpanch had filed the written statement but thereafter, the gram panchayat was proceeded ex parte. The only remedy available to the gram panchayat was to challenge the decree dated 4.1.1984 by filing an appeal or the gram panchayat could have filed an application for setting aside the ex parte decree before the trial Court.

The substantial questions of law that arise in this case are (i) "whether the decree dated 4.1.1984 was a result of fraud and collusion and could be challenged by filing an independent suit ?”
(ii) “whether the jurisdiction of the Civil Court was barred in view of Section 13 of the Act ?"

Admittedly, defendant Giani, now deceased, had filed a suit for declaration that he had become owner of the suit land by way of adverse possession bearing No.224 of 1981 against the gram panchayt. In the said suit, the gram panchayat was impleaded through Sarpanch Prithvi Singh. Defendant-gram panchayat filed its written statement and on the pleadings of the parties, issues were framed by the trial Court on 16.9.1981. Thereafter, vide order dated

22.8.1983, gram panchayat was proceeded ex parte and the suit of the plaintiff was decreed vide judgment decree dated 4.1.1984 Ex.P-1 and Ex.P-2 respectively. The correctness of the said judgment and decree is under challenge. The case of the plaintiff-appellant-gram panchayat is that the said decree was a result of collusion.

It has been held by this Court in **Bhim Singh and others vs. Zile Singh and others 2006 (3) RCR (Civil) 97**, it was held as under:-

"10. At this stage, it would be relevant to notice the provisions of Article 64 and Article 65 of the Limitation Act as follows :

Description of suit	Period of limitation	Time from which period begins to run
Article 64 For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
Article 65 For possession of immovable or any interest therein based on title. *Explanation* - For the purpose of this Article -	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

(a) Where the suit is by a remainder-man, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainder-man, reversioner or devisee, as the case may be, falls into possession;
(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;
(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment debtor who was out of possession.

11. Under Article 64 of the Limitation Act, a suit for possession of immovable property by a plaintiff, who

while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person claiming title within 12 years. The limitation under this Article commences from the date when the *possession of the defendant becomes adverse to the plaintiff.* In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned *"when the possession of the defendant becomes adverse to the plaintiff".* Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a

plaintiff with regard to his ownership on the basis of an adverse possession.

12. I am supported by a judgment of Delhi High Court in ***1993(3) Punjab Law Reporter (Delhi Section) 70 (Prem Nath Wadhawan v. Inder Rai Wadhawan).***

13. The following observations made in the Prem Nath Wadhawan's case (supra) may be noticed :

> "I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have also perused the record. I do not find any merit in the contention of the learned counsel for the plaintiff that the plaintiff has become absolute owner of the suit property by virtue of adverse possession as the plea of adverse possession can be raised in defence in a suit for recovery of possession but the relief for declaration that the plaintiff has become absolute owner, cannot be granted on the basis of adverse possession."

14. At this stage, it may also be relevant to notice the relevant portion of paras 134 and 135 of the 3rd report of Law Commission of India as follows :

> If the defendant wants to defeat the right of the plaintiff, he must establish his adverse possession for over 12 years which has the effect of extinguishing the title of the owner by the operation of Section 28 of the Limitation Act read with Article 144. If he fails to do so there is no reason for non-

suiting the plaintiff merely because he was not able to prove possession within 12 years. The inequity of this requirement is illustrated by the following example : If A, B and C are independent and successive trespassers on the property and the suit for possession is brought by the true owner against C, it must fail unless the plaintiff proves his possession within 12 years, though the last trespasser C was not in possession except for a short period."

"In our opinion, article 142 must be restricted in its application only to suits based on possessory title. The plaintiff in such a suit seeks protection of his previous possession which falls short of the statutory period of prescription, to recover possession from another trespasser. The plaintiff's prior possession no doubt entitles him to protection against a trespasser though not against the true owner. The true owner's entry would be a rightful entry and would interrupt adverse possession. But if the defendant trespasser is a person who wishes to oust the plaintiff who was himself a prior trespasser or a person who did not come into possession as a trespasser but continued to hold it as such, in order to enable the plaintiff to continue his wrongful possession without disturbance and to enable him to acquire a title by adverse possession, the law

must undoubtedly step in and give relief to the plaintiff. As against the true owner a person who is in possession for a length of time short of the statutory period is not entitled to any protection but the net result of the decisions under article 142 is that the true owner must prove that he had a subsisting title on the date of suit. We, therefore, suggest that in order to avoid injustice and inequity to the true owner and to simplify the law, article 142 should be restricted to suits based on possessory title and the owner of the property should not lose his right to it unless the defendant in possession is able to establish adverse possession."

15. Therefore, it must follow that the intention behind Article 65 is clear and unambiguous i.e. not to provide any period of limitation for a suit for possession by a plaintiff on the basis of title, however, at the same time by providing a defence to a defendant of adverse possession. The defendant in such a defence would have to prove the aforesaid factum of adverse possession and, naturally, the onus of proving the aforesaid defence would be upon the defendant. The reason behind the intention of the Legislature is very clear. If a defendant is able to establish his adverse possession, then the very title of the plaintiff to the property is extinguished. But for the aforesaid defence of adverse possession, a plaintiff has no restriction of limitation to seek possession of

immovable property on the basis of his title."

Thus, the suit filed by defendant Giani was not maintainable as he had based his claim on the basis of adverse possession. Although the defendant-gram panchayat was proceeded ex parte but this did not absolve the Court from its duty. The trial Court was required to satisfy itself as to whether the relief sought by the plaintiff in the suit could be legally granted.

The Gram panchayat is recorded as owner of the suit property in the revenue record and defendant Giani was described to be in possession of the suit property.

A perusal of the judgment Ex.P-1 reveals that the gram panchayat had taken a specific plea that the suit land was being used for common purposes and it was *shamlat deh*. A plea was also taken that the suit was barred under Section 13 of the Act. It was further pleaded by the gram panchayat in the said suit filed by defendant Giani that the gram panchayat was auctioning the land every year on lease. It was further pleaded that the application filed by the gram panchayat under Section 7 of the Act seeking ejectment of the plaintiff had been allowed. The trial Court without looking into these pleas had passed the ex parte decree in favour of the plaintiff.

Section 13 of the Act reads as under:-

> "**Bar of jurisdiction in civil courts:** No civil courts shall have jurisdiction--
>
> a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not *shamilat deh* vested or deemed to have been vested in a Panchayat under

this Act ; or

b) to question the legality of any action taken by the Commissioner or the Collector or the panchayat, under this Act; or

c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine."

Thus, the suit filed by defendant Giani for declaration was not maintainable in view of above provision. The matter as to whether the land in dispute was *shamlat deh* or not could not have been decided by the Civil Court. The parties cannot achieve what is contrary to law and merely because the defendant-gram panchayat had been proceeded ex parte, the suit filed by defendant Giani could not have been decreed as the same was not maintainable. The fact that the Sarpanch did not pursue the case and thereafter, no appeal was filed challenging the decree dated 4.1.1984 leads to the inference that the suit filed by defendant Giani was filed by him in collusion with Sarpanch Prithvi Singh. The Sarpanch had, thus, colluded with defendant Giani so that an ex parte decree could be passed in favour of defendant Giani qua the land which belonged to gram panchayat. The suit land was public property and in fact, a duty was cast on the Court to be more careful while deciding the suit. The suit filed by the gram panchayat challenging the decree dated 4.1.1984 on the ground that it was a result of fraud and collusion was maintainable. The new Sarpanch in order to protect the public property has filed the present suit. The property of a public institution cannot be allowed to be jeopardised by persons, who at an earlier

point of time, might have represented it and who were expected to effectively defend public interest and community property. Persons representing public bodies are expected to discharge their functions faithfully and in keeping with the trust reposed in them. Learned first Appellate Court, thus, erred in dismissing the suit of the gram panchayat on the ground that the gram panchayat could have challenged the earlier decree in appeal or could have moved an application for setting aside the ex parte decree, as independent suit challenging the decree obtained by fraud and collusion is maintainable. Moreover, the suit filed by defendant Giani was not maintainable in view of Section 13 of the Act. The substantial question of law stands answered accordingly.

Hence, the present appeal is allowed. The impugned judgment and decree dated 3.8.1993 passed by the first Appellate Court are set aside and the judgment and decree dated 25.8.1989 passed by the trial Court are upheld.

(SABINA)
JUDGE

May 05 , 2011
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